

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 AUTOEXPO ENT. INC., et al, 23-CV-2349 (OEM)
4 Plaintiff, United States Courthouse
5 -versus- Brooklyn, New York
6 OMID ELYAHOU, et al., April 12, 2024
7 Defendants. 11:00 a.m.

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9 TRANSCRIPT OF CIVIL CAUSE FOR PRE-MOTION CONFERENCE
10 BEFORE THE HONORABLE ORELIA E. MERCHANT
11 DISTRICT JUDGE

12 APPEARANCES

13 For the Plaintiff: MILMAN LABUDA LAW GROUP, PLLC
14 BY: MICHAEL MULE, ESQ.

15 For the Defendant: EMOUNA & MIKHAIL PC
16 BY: MATIN EMOUNA, ESQ.

17 LAW OFFICE OF STEVEN COHN PC
18 BY: MATTHEW FEINMAN, ESQ.

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Rivka Teich CSR RPR RMR FCRR
Official Court Reporter

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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise. Civil cause for
3 premotion conference in the matter of AutoExpo Incorporated,
4 et al versus Elyahou, et al, docket number 23-CV-9249.

5 Counsel state your appearance starting with the
6 plaintiff.

7 MR. MULE: Good morning. Michael Mule for the
8 plaintiffs from the law firm Milman Labuda Law Group PLLC.
9 Good morning.

10 THE COURT: Good morning.

11 MR. EMOUNA: Good morning, your Honor. On behalf of
12 Omid Elyahou and SimpSocial LLC, Matin Emouna.

13 THE COURT: Good morning.

14 MR. FEINMAN: Good morning, your Honor. Matthew
15 Feinman on behalf of defendants Fifty Seven Consulting and
16 Fazeeda Kassim.

17 THE COURT: Good morning.

18 We're here this morning on a premotion conference
19 with regard to defendants' purported request for leave to file
20 a motion to remand or -- I'm sorry -- leave for remand and/or
21 motion to dismiss.

22 I know this is the first time the parties have been
23 before me so I just, I want to go over what I understand the
24 procedural history and posture to be at this particular
25 juncture to make sure I'm not missing anything here. I see

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1 that this action was commenced on December 18, 2023, by the
2 filing of a complaint and that is a complaint that was filed
3 by plaintiffs.

4 MR. MULE: Yes, your Honor.

5 THE COURT: Okay. And on February 27 -- 20, 2024,
6 defendant Omid filed a motion for a premotion conference
7 requesting leave as to a motion for remand and/or motion to
8 dismiss for failure to state a claim.

9 MR. EMOUNA: That is correct, yes, your Honor.

10 THE COURT: On February 27 there was on opposition
11 letter that was filed to that motion for premotion conference,
12 and on February 28, 2024, the Court granted the motion for
13 premotion conference and set this conference for today --
14 actually on yesterday, and it was adjourned by request of the
15 parties to today. On the same date it seems that defendants
16 is it, Eitan?

17 MR. FEINMAN: Yes, your Honor.

18 THE COURT: Eitan, 57 Consulting Group and Kassim
19 also filed a motion for premotion conference solely with
20 regard to the anticipated motion to dismiss; is that correct?

21 MR. FEINMAN: Yes, that's correct.

22 THE COURT: Then it appears that on March 6, that
23 plaintiffs filed opposition papers or position with respect to
24 that request.

25 I read the complaint that was filed in this case,

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1 and each of the parties' letters with regard to the motions or
2 anticipated motions at issue. I'd like to hear from the
3 parties briefly; in particular, to summarize what they
4 perceive to be the most relevant facts here as well as the
5 positions of both counsel, both on the remand and also the
6 motion to dismiss.

7 I'd like to start with plaintiffs' counsel.

8 MR. MULE: Thank you, your Honor.

9 This case involves trade secrets. Basically what we
10 have here is a relationship that went back three decades.

11 My client, AutoExpo, its principle Michael Shahkoohi
12 and also another principle, Omid Elyahou, have known each
13 other since Mr. Elyahou was about 15 or so. My client
14 introduced him to the car dealership business, he basically,
15 he group up with him, the defendant. In 1999, Mr. Elyahou,
16 who was 18 years old, was started to be given responsibilities
17 at the dealership. And by 2006 he was doing well, he was
18 elevated to a position of partner, they call it partner,
19 operating partner or manager. So he became an owner of
20 AutoExpo.

21 And as an owner of AutoExpo and as the what, they
22 call, the operating partner, he was the one in charge. He was
23 given the responsibility, he was basically -- this was his
24 baby to run. So our client gave him this responsibility. And
25 the idea was, this was family, let's get him started in the

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1 business, and we can all make money together.

2 In 2008 they have another agreement executed by them
3 and the agreement, it says that the operating partner is in
4 charge of new ideas and investments -- this is paragraph 60 of
5 the complaint -- and he may not enter into any other
6 partnership or any other business directly or indirectly other
7 than AutoExpo or its subsidiaries. Shortly after that
8 agreement was signed in 2009, AutoExpo invests its own money
9 approximately \$50,000 to develop a proprietary, for itself,
10 inventory system.

11 Now a lot of people have heard of Dealer Track,
12 these are off-the-rack type products that exist now. But at
13 the time, this was a specific system that was developed by
14 them, paid for by them.

15 I've seen this system. It's pretty impressive. The
16 system, can you pull up for each customer that ever came in
17 from 2008 approximately, their information, what vehicle they
18 bought, what type of vehicle they bought, their preferences,
19 make of the car. You can drill down, get all the photos for a
20 particular vehicle. Over 15,000 customers in this database.
21 They had self-created forms through sweat over the years that
22 they created and developed and put into this system.

23 What happened is that in March of 2020 Mr. Eitan,
24 who was a manager at AutoExpo, he resigns. Shortly after that
25 resignation, our client starts making inquiries about how the

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1 company is performing. And they are looking into it. And
2 getting information, which is in the complaint, that sales
3 after Mr. Eitan leaves he forms a new company called Certified
4 Performance, also a defendant here. They learn that sales are
5 going -- that they were bidding on and ready to go, are going
6 to this other company. And the only way it can go to that
7 other company is by someone on the inside. So the complaint
8 had for access to this system, it was the owners,
9 Mr. Shahkoohi and Mr. Omid, they are the ones who had access.

10 There are different types of access. A salesperson
11 may have access to like some vehicle information or something
12 like that. But getting a full spread of how many cars have
13 been sold, how many are on the lot, drilling down particular
14 information as to customers, all that stuff, uh-huh, just the
15 owners have that type of information.

16 In this complaint we allege all the elements,
17 respectfully, for Defend Trade Secrets Act.

18 We have a limited access to the trade secret
19 material, the owners. We have a reasonable basis and belief
20 that this information was taken because sales that we were
21 bidding on, they went to this other company. And we have
22 information that Mr. Elyahou is affiliated with that company
23 with Mr. Eitan, a former manager at AutoExpo.

24 What is egregious here is that this is a vast amount
25 of basically stealing of corporate assets that occurred,

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1 that's what this case is about. And it's not only stealing of
2 corporate assets and money, it's taking their business.

3 So if you look at the complaint, the sections of
4 paragraphs 240 and following, give a significant amount of the
5 flavor of what occurred with respect to this Defend Trade
6 Secrets Act. Particularly at 261 we have the allegations of
7 the reasonable measures, it was restricted to only employees
8 who have fiduciary duty, i.e. Mr. Elyahou and Mr. Shahkoochi,
9 the other owner, plaintiff, principle. All the other
10 information was secured protected by passwords, usernames.
11 These are reasonable measures as a matter of law on a pleading
12 motion.

13 The case *Global Refining Group Inc. versus PMD*
14 *Analysis Inc.* 2023 U.S. District Lexus 157312 at 33 to 24,
15 that's a Southern District of New York August 15, 2023. In
16 that case the Court specifically said: Reasonable measures
17 necessary to satisfy 1839(3)(b), which is the section of the
18 Defend Trade Secrets Act may include the use of computer
19 software, passwords, as well as confidentiality agreements.
20 In that case the Court found that the plaintiff had adequately
21 pled that it developed this information at considerable
22 expense, just like was done here. And that it was generally
23 not known or accessible to competitors or the public, this was
24 proprietary to this dealership. And that reasonable measures,
25 i.e. limiting access of the data by contract and password.

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1 That what was done here, your Honor.

2 As far as the Defend Trade Secrets motion, we feel
3 this is a delay tactic because they don't want to get into the
4 facts here. The fact the here are damaging.

5 As far as the remand. I just don't know what that
6 motion is. We had started a complaint by summons with notice
7 in the Supreme Court. And as the investigation continued, we
8 discovered that this was a much bigger claim and involved much
9 more theft of trade secrets and other types of theft than we
10 had originally thought. And so we filed this action here. We
11 asked for a stipulation, there is a motion to, and we agreed
12 to discontinue that case. But we're here, your Honor, and
13 this is the plaintiffs' choice of form. There is no remand
14 mechanism, as far as we know. We didn't remove it to federal
15 court; we commenced this action.

16 THE COURT: When you say there is a stipulation or a
17 consideration for a stipulation of discontinuance in a state
18 court action, can you speak to me specifically which action is
19 currently -- let me start, is there only one action related to
20 these matters filed in state court by you?

21 MR. MULE: By us, there is one. After we commenced
22 that action, I think maybe a week or so after, plaintiff
23 Elyahou who filed an action for inspection of books and
24 records in the state court. Our action is under index number
25 617486 of 2023. I don't have --

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1 THE COURT: When was that filed in 2023?

2 MR. MULE: That was filed October 26.

3 THE COURT: What is the current status of that?

4 MR. MULE: The current status of that is, I believe
5 there is a motion, it was a motion to dismiss that action in
6 favor of this case. We basically said --

7 THE COURT: I don't know what in favor of this case
8 means. Is there a motion to dismiss pending?

9 MR. MULE: A motion to dismiss is spending, yes,
10 your Honor.

11 THE COURT: Has it been briefed by both sides?

12 MR. MULE: It was briefed.

13 THE COURT: So it's subjudice at this point.

14 MR. MULE: Correct.

15 THE COURT: As of what date?

16 MR. MULE: The submission date was I believe
17 December 18 -- I'm not certain of the date, your Honor. I
18 don't have that handy. I can find out momentarily.

19 THE COURT: I'll hear now from defense counsel.

20 MR. MULE: Thank you, your Honor.

21 MR. FEINMAN: Yes, your Honor.

22 THE COURT: I want to specifically pick up where
23 counsel left off. And just ask about the status of the state
24 court action that was just referenced.

25 MR. EMOUNA: Your Honor, first of all my apologies

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1 to the Court and counsel for speaking a little bit louder.

2 THE COURT: You're perfect, your voice is perfect
3 for me.

4 MR. EMOUNA: I just put in hearing aids. I'm
5 screaming, I can't even hear myself. Thank you for
6 accommodating me.

7 THE COURT: Certainly.

8 MR. EMOUNA: Yesterday was the day that we spent the
9 entire day with seven attorneys going to Newark, New Jersey.
10 I thank the Court for accommodating us.

11 I'm going to give you the background about the two
12 cases that are pending in Nassau County Supreme Court
13 commercial division before Judge Sharon Gianelli.

14 THE COURT: So there are two cases. Start with the
15 case numbers for those.

16 MR. EMOUNA: I shall. The first case, I'll go by
17 docket number, that was filed by plaintiff on October 26, 2023
18 index number 617486 of 2023. The second matter was filed on
19 October 30, 2023, that's index number 617795 of 2023.

20 Now, I could elaborate on both of these cases.
21 Prior to the commencement of any of these actions, way before
22 the case even started, Mr. Elyahou approached me saying they
23 are not giving me access to the books and records for
24 AutoExpo, please, do something. I had drafted a letter that I
25 was going to send to AutoExpo; and on or about October 25,

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1 AutoExpo sent a letter to Omid Elyahou saying that they want
2 their books and records and if you don't give us the books and
3 records by October 30 we're going to commence an action.

4 The same letter I was going to write back to
5 counsel, I said, if you don't give me the books and records
6 I'll give you the same deadline of October 30, I'll commence
7 an action.

8 In the meantime, I tried calling counsel and
9 emailing counsel and he was busy. And he did write back to me
10 that I'm in court, I'm in depositions, I don't remember the
11 exact thing. We'll speak on Friday.

12 October 30, from what I remember, it was a Thursday,
13 Judge. October 31, on Friday, we did speak with counsel. But
14 counsel didn't even tell me that they had commenced an action.
15 I said, listen, according to VCL426 you have to give me the
16 books and records. I need access. He goes, I'll speak to my
17 client back to you.

18 Between me and you, I know they were kicking the can
19 down the road.

20 On that Monday, they start -- October -- on that
21 Monday, October 30, I did an order to show cause. It says
22 special proceeding Nassau County Supreme Court Article 78
23 proceeding to inspect the books and records. Unfortunately,
24 Nassau County was so delayed. It took them one week to assign
25 a judge and read the order to show cause to have it returnable

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1 on whatever date. The order to show cause was signed a week
2 later.

3 I immediately sent counsel copies. Counsel asked
4 for extra time to reply. I never say no to other attorneys,
5 never say no. I said, no problem, you want more time, you got
6 more time.

7 In the meantime he's like, we commenced an action,
8 my action started before your action. I sent a demand for a
9 complaint because they have to give me a complaint within 30
10 days. He sent me a stipulation extending his time to respond
11 to give me a complaint to December 18, which I said no
12 problem.

13 Now, on the order to show cause that was on the
14 617795 2023 docket, before Judge Gianelli, they filed a cross
15 motion against my client for saying that, first of all we have
16 another action that started before your action so your action
17 is not good enough, you should dismiss this case.

18 The second, they did a cross motion for books and
19 records, and that we're asking for these information in bad
20 faith because that's their only defense for not giving
21 documents, saying it's in bad faith.

22 So funny enough, on December 18, instead of filing a
23 complaint -- they make a motion to discontinue the action that
24 they decided to start in Nassau Supreme Court as a placecard
25 holder to move the case to federal court. If that's not venue

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1 shopping or playing a placecard or playing a game, I don't
2 know what really is, Judge. December 18 is when they make
3 their motion. They could have filed this case all along to
4 federal court if that was the case --

5 THE COURT: So the motion that was filed on
6 December 18, 2023, in the state court action, 617486 --

7 MR. EMOUNA: That was on --

8 THE COURT: -- what was that motion?

9 MR. EMOUNA: That motion that he filed on that day,
10 I wrote it in my letter.

11 THE COURT: Is it the motion to discontinue?

12 MR. EMOUNA: Because he said there was a
13 stipulation. There was no stipulation. So a motion that they
14 filed was pursuant to CPL3217B of the CPL law, dismissing the
15 action with prejudice in favor of the case filed in United
16 States District Court for the Eastern District of New York; or
17 in the alternative, pursuant to Sections 2004, 2005 and
18 Section 3012 subsection B of the CPL law, extended their time
19 in which plaintiff must served a complaint in the state board
20 action, or granting plaintiff such other further leave that
21 the honorable court deems just and proper.

22 So Judge, October 30 they filed an action. They
23 come forward in my opposition to my order to show cause in my
24 617995 --

25 THE COURT: I understand the timing. Right now I

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1 really want to, I don't need really an argument on this one.

2 I just I'm trying to make sure I have the facts right in terms
3 of where these cases are and what is currently pending.

4 I'm trying discern what the current status is with
5 regard to the December 18, 2023, request. Is there nothing
6 further that's happened? That is just sitting dormant at this
7 particular juncture that particular case?

8 MR. EMOUNA: It's not dormant, motions have been
9 filed.

10 THE COURT: And the Court has not ruled, you haven't
11 heard a decision. Did you respond to that?

12 MR. EMOUNA: I responded and I opposed it.

13 THE COURT: On what date?

14 MR. EMOUNA: The date I responded was a week after,
15 it was before the New Year's, Judge. They filed a reply.

16 THE COURT: What date do you recall that you filed
17 your reply?

18 MR. EMOUNA: If I remember correctly, January 4 or
19 5, Judge.

20 THE COURT: Just because I'm trying to get a sense
21 of how long it's been pending. And moments ago, I had
22 December 18 is that it was subjudiced since the 18th. It
23 seems like it's not, it's more.

24 MR. MULE: If I may, your Honor?

25 THE COURT: Yes.

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1 MR. MULE: So I believe that their action on books
2 and records, there was a reply filed on December 18. On our
3 initial action that we had sought the stipulation to just
4 discontinue it, we made the motion to discontinue that case.

5 THE COURT: There is no stipulation.

6 MR. MULE: There was no stipulation.

7 So we made a motion to discontinue that case. And I
8 believe the reply on that was filed sometime in January. I
9 don't have the exact date.

10 THE COURT: Okay. Just one point that I want to
11 just, as you get into this, these cases with the state court
12 actions. You have asked for a conference to discuss your
13 anticipated motion for remand or and/or motion to dismiss. I
14 want to speak specifically to the request for an anticipated
15 motion to remand. I'd like to know the basis for your remand
16 motion.

17 I say specifically, I'm looking at procedures in
18 federal court with respect to removals, 28 U.S.C. 1447. I
19 don't understand this case to have been removed from state
20 court to federal court. If that's your understanding, I'd
21 like to know the authority and the basis for that
22 understanding.

23 MR. EMOUNA: Well, I said in my paper, I said they
24 don't call --

25 THE COURT: So you can't file a motion to remand a

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1 case that hasn't been removed. Is your premise is that the
2 case -- do you believe the case was removed or did he just
3 file an action in federal court?

4 MR. EMOUNA: Well, if he started a proceeding action
5 in state court why is he starting an action in federal court?

6 THE COURT: Look, I'm not the plaintiff. I can't
7 speak to his or his counsel, I don't know why he did it.

8 But if it's that he filed a separate action in
9 federal court with claims that he filed an action in state
10 court, that just is what it is. But it's not a case that was
11 removed from state court.

12 All of these terms have legal import. And so I'm
13 trying to -- I want to hear from you whether or not you are
14 seeking to simply file a motion to dismiss for whatever basis
15 you believe there is no jurisdiction for this Court, or they
16 failed to state a claim, whatever your basis is for your
17 motion to dismiss; if that's what you're seeking, we can speak
18 about that and then set a briefing schedule for your motion to
19 dismiss.

20 But if you're seeking to file a motion for remand,
21 I'd like to first address that and hear what your basis would
22 be to remand a case that I don't understand to be removed from
23 state court to federal court, because I don't have any
24 jurisdiction to remand a case that wasn't removed.

25 MR. EMOUNA: Very well put, Judge. I thank you for

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1 clarifying it.

2 My second paragraph in my letter --

3 THE COURT: I want to hear from you, as we're
4 talking in this conference, about a motion that you anticipate
5 making. Is it your intention for me to set a briefing
6 schedule for a motion to remand? I find that might be futile
7 because -- and so I want to know before I do that and caution
8 you before you have plaintiffs' counsel respond to that and
9 incur fees or anything else there -- think about and
10 articulate for me what the basis would be for it.

11 MR. EMOUNA: I would make a motion to say that this
12 Court -- it's not to make a motion to remand.

13 THE COURT: So you're not making a motion to remand.

14 MR. EMOUNA: I can't call it a motion for remand.

15 THE COURT: You certainly cannot. So long as we're
16 on agreement on that.

17 MR. EMOUNA: On the face.

18 THE COURT: Not with the facts that you presented
19 here, it doesn't seem that you have a basis for that.

20 MR. EMOUNA: I could make a motion to dismiss saying
21 there is a proceeding --

22 THE COURT: You certainly can.

23 MR. EMOUNA: I would like to make a motion, I don't
24 know what it's called, I don't want to use the improper word,
25 a motion to say there is a prior action pending so the Court

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1 should not have jurisdiction to hear this case because there
2 is a prior action pending. I could make that motion, Judge.

3 THE COURT: Is that what you intend to do?

4 MR. EMOUNA: That's one part of what I want to do,
5 yes.

6 THE COURT: Okay. Speak to me in full about what
7 you anticipate in terms of your motion with regard to the
8 plaintiffs' complaint in this case.

9 MR. FEINMAN: Your Honor, may I make the substantive
10 argument?

11 THE COURT: Certainly.

12 MR. FEINMAN: Thank you, your Honor.

13 As Mr. Mule indicated during his argument, he said
14 he's seen the alleged trade secret. And reading the
15 complaint, taking their own allegations, the problem, the
16 fundamental problem with their allegations is, even by them,
17 he's not the only one who has seen the alleged trade secret;
18 nor is the alleged owner, AutoExpo the, only one who has seen
19 the alleged trade secret.

20 The fundamental to the entire basis of his alleged
21 subject matter jurisdiction under the Defend Trade Secrets Act
22 is his requirement that he has to show that the owner of the
23 alleged trade secret took reasonable measures to protect.
24 It's fundamental. If the alleged owner, AutoExpo, voluntarily
25 disclosed the alleged trade secret, there is no trade secret.

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1 And a careful reading of plaintiffs' complaint leads to the
2 conclusion that AutoExpo, by plaintiffs' own allegations,
3 voluntarily disclosed the alleged trade secret.

4 Throughout the complaint, and if you track this,
5 there is multiple plaintiffs. Throughout the complaint, they
6 allege standing under the Defend Trade Secret Act as belonging
7 to AutoExpo. They say: AutoExpo is the owner of the trade
8 secret. They say that throughout the complaint, paragraph 11,
9 216, 240, 260.

10 Importantly, AutoExpo is a single car dealership.
11 It's not multiple car dealerships. It's a single car
12 dealership. None of the other plaintiffs are car dealerships.
13 Yet, in the complaint when it comes time to plead reasonable
14 measures, they allege multiple dealerships. They allege that
15 plaintiffs have made reasonable efforts to maintain the
16 secrecy of this information, including limiting its disclosure
17 to those who owe a fiduciary duty to the dealerships,
18 dealerships plural, paragraph 280.

19 That's not a typo. In plaintiffs' complaint, they
20 go through, and Mr. Mule provided a long history.
21 Mr. Shahkoochi, who is not a plaintiff, he alleges throughout
22 he's been in the automobile dealership for over three decades
23 and he operates several dealerships. In addition, the trade
24 secret claims that they bring, they are pled by all
25 plaintiffs. How can plaintiffs who are not car dealerships

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1 also have standing to assert trade secret claims of the car
2 dealerships.

3 The plaintiff, AutoExpo's disclosure even to the
4 other plaintiffs here, defeats trade secret protection.

5 In addition, plaintiffs it seems they carefully
6 plead around this fact are seeming to allege that Mr. Shakewy
7 that AutoExpo had disclosed these alleged trade secrets to
8 Mr. Shakewy's other dealerships. That out right defeats any
9 trade secret claim here. If you go through and we look at how
10 all of these allegations of reasonable measures to maintain
11 trade secret protections are pled, they are pled, I would say,
12 artfully at best to get around this fact. For example,
13 complaint paragraph 295, Mr. Mule cites some this language,
14 they say: The trade secrets have not been disclosed to anyone
15 except those with a fiduciary duty who are obligated to keep
16 this information confidential. Owe a duty to who? Everybody
17 who has seen it? The multiple plaintiffs, Mr. Shakewy's other
18 car dealerships? That's more than an oversight in the
19 pleading. It's pled like that throughout.

20 Paragraph 313: Plaintiffs make reasonable efforts
21 to maintain the secrecy of this information including limiting
22 its disclosure to those who owe a fiduciary duty to them.
23 Again, AutoExpo is the dealership. It's the only dealership.
24 And owing a fiduciary duty and even sharing this with other
25 plaintiffs defeats trade secrets protection.

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1 That would be the basis of the motion to dismiss,
2 your Honor. Because the entire basis of subject matter
3 jurisdiction here rests on the existence of this alleged trade
4 secret. And according to plaintiffs' own careful allegations,
5 when you add them up, there is no trade secret at issue.

6 THE COURT: Plaintiff?

7 MR. MULE: Yes, your Honor.

8 If it says plaintiffs at certain spots where it
9 should say plaintiff, the only with auto proprietary inventory
10 system for auto dealerships is the auto dealership. The other
11 entity, one is a real estate entity, one is an insurance
12 agency. They have nothing to do with auto dealership. We're
13 not making any -- we didn't mean to make any allegation that
14 those entities had a trade secret access.

15 In addition, one thing that we will get into in
16 discovery is that Mr. Shakewy, prior to them entering into
17 this agreement, had multiple dealerships. Now, different
18 dealerships are going to have access to their own system.
19 Some fiduciaries, because they are including Mr. Elyahou, had
20 access to be able to see different things for different
21 dealerships because he was basically part of this whole group,
22 and same with Mr. Shakewy. These are related entities. That
23 does not defeat any claim in any event. Each dealership had
24 its own access. And the fiduciaries, Mr. Shakewy and
25 Mr. Elyahou, are the ones that had access.

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1 Now, if there is a claim that there was a disclosure
2 of it, since Mr. Elyahou is the one who controlled and
3 operated the dealership, any disclosure would have been
4 improper and would have been done by Mr. Elyahou.

5 THE COURT: I'll allow you to respond.

6 MR. FEINMAN: Thank you, your Honor.

7 I believe Mr. Mule just demonstrated that there can
8 be no trade secret here, even if you take what he said. He
9 said, Mr. Shakewy has multiple dealerships and those multiple
10 dealerships have access to whatever they are alleging to be
11 the trade secret here. Those other car dealerships are not,
12 they are not plaintiffs to this action. They are separate
13 entities. That is a voluntary disclosure of the alleged trade
14 secret, even at this stage by their own allegations.

15 To take that pleading -- "plaintiffs" isn't an
16 oversight. Their claims are pled on behalf of all plaintiffs.
17 This isn't one case of "S" of one plaintiff. They plead it
18 throughout. At minimum, it's not the complaint they brought.
19 They brought group pleading against all defendants by all
20 plaintiffs.

21 At this stage the complaint they brought, it's
22 flawed in every respect with respect to their ability to
23 properly state a trade secret.

24 THE COURT: Counsel Mule, at this stage
25 understanding arguments that are going to be raised by the

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1 defendants in this case, is there something that you feel
2 should be done differently with regard to your complaint
3 before me setting this for a motion to dismiss, or instead of
4 setting a schedule. Again, I'm trying to be efficient and not
5 go through an exercise in futility. As you sit here listening
6 to this and read this, you acknowledge or envision that there
7 are some claims that have been brought that you know are not
8 properly brought, it seems to go through the exercise of
9 motion practice on those claims at this point, what I would
10 say to be an exercise of futility for all involved, and not
11 the most efficient way to move to what may be the core claims
12 of this case that are viable. I'd like to hear from you on
13 that. Otherwise, I'm prepared to just set a briefing
14 schedule.

15 MR. MULE: Your Honor, we have the cause of action
16 that is relevant, the first cause of action, the Defend Trade
17 Secret.

18 Although the very first paragraph and the third
19 paragraph says plaintiffs, at the end it's clearly referring
20 to AutoExpo, paragraph 291. It says: As proximate direct
21 result of defendants' misappropriation of AutoExpo's
22 confidential and trade secrets, AutoExpo has suffered and
23 continues to suffer.

24 THE COURT: To be clear, I'm not here to rule today
25 on the sufficiency of your pleadings. I'm merely putting to

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1 you and giving you an opportunity to perhaps appeal to me to
2 do something else if you think you might want to do that.

3 What I don't -- in doing so, to be clear, if it is
4 that this is a futile exercise; that is, that you're resting
5 on your pleading as it stands, knowing if you know that there
6 are claims that are not sufficient, what I don't want to hear
7 on the other side of dismissed claims when someone else is
8 saying that you did know, we gave you notice, and we want fees
9 for something. I don't know, I just anticipate that could
10 happen. I don't want you to then say to me, but I had a bona
11 fide claim. If you know, as you stand there, that there is
12 something wrong with the pleading the way it stands, this is
13 the opportunity to do something about it; otherwise, we go to
14 briefing and everything falls where it falls.

15 MR. MULE: Right, okay. If I may respond to that,
16 your Honor?

17 THE COURT: Sure.

18 MR. MULE: So at this point I believe the pleading
19 is satisfactory.

20 However, I do want to alert the Court, I did learn
21 two days ago that we may have additional federal claims which
22 I want to look into. If it does make sense, and it's just a
23 matter of repleading, to go through this exercise, like I
24 said, I might have additional claims I just learned additional
25 facts two days ago, I have to research them. But I anticipate

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1 there may be claims under ERISA, so that's an additional
2 federal claim. It might make some sense for us to amend
3 before there is any briefing schedule set. I think that does
4 make some sense for me on a management point.

5 THE COURT: You're amending only as to what you
6 claim to be potential ERISA claims or something else?

7 MR. MULE: That's primarily it. However, he says
8 that I put plaintiffs, or my associate who was working on it
9 at the time, put plaintiffs in certain the spots, I'll clarify
10 that that he's making a claim where it says plaintiffs, it
11 should say plaintiff AutoExpo.

12 THE COURT: I'll hear from defense counsel.

13 MR. FEINMAN: Yes, your Honor.

14 Certainly, giving Mr. Mule more time to see if he
15 has potentially other claims, we would certainly object to
16 this. There is trade secret against my clients, and
17 plaintiffs is just one aspect. I think we're, by Mr. Mule's
18 own arguments today, by his own allegations, it is to me
19 taking their allegations as true, it is plain that AutoExpo,
20 that these trade secrets, were voluntarily disclosed. It
21 seems to me that Mr. Mule, he's bordered on testimony with
22 some facts outside the complaint, and said Mr. Shakewy has
23 several dealerships and those dealerships had access to it.

24 So I believe Mr. Mule did not directly address the
25 issue when you asked him, do you want to truly maintain this

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1 complaint as it's pled. His response was: I want to see if
2 we have additional claims. So we would object to any sort of
3 giving Mr. Mule more time to see if he has more claims.

4 THE COURT: I agree on that. Because this
5 conference was set to discuss what was pending before the
6 Court. And now you've introduced something really an hour
7 into this conference and you could have opened with: In
8 addition to everything that I've said, I also have additional
9 claims that I'd like to add, actually, I'd like to have more
10 time. And you could have asked then, notwithstanding whatever
11 arguments defense counsel might have made, appeal to the Court
12 to ask for time to amend the complaint and to say that this
13 might all be moot in some way.

14 What I don't want to do is waste defense counsels'
15 time and/or any of the parties time or efforts or any energy
16 on this. And that is to allow the passage of time for you to
17 just investigate with no certainty. As you came here, if you
18 didn't come here thinking you were going to amend the
19 complaint with regard to an ERISA claim, then now is not the
20 time to just brainstorm on it. Right. I would be inclined to
21 set a briefing schedule for the motion to dismiss and if you
22 decide that you have a ERISA claim that you want to bring, a
23 bona fide claim for some reason, make that application. I'll
24 rule on it and see if it makes sense, because it shouldn't of
25 interrupt the briefing schedule that I have set.

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1 I'll hear from the parties if there is something you
2 would like me to consider; otherwise, if not, that's where I
3 am right now.

4 MR. MULE: If I may, your Honor. I think
5 Mr. Feinman is misinterpreting what I said about Mr. Shakewy
6 having multiple -- yes, he has multiple dealerships, that is
7 in the pleading. I just want to state that for the record, as
8 far as access, all of that stuff. We'll get into that in this
9 case.

10 But we're ready to go forward with a briefing
11 schedule.

12 The only reason I mentioned ERISA is because I just
13 I didn't want the Court to think down the line if there is
14 some basis for that and I assert it that I didn't alert the
15 Court.

16 THE COURT: I will have to assess at that time what
17 has been put to me at the time, where it is in the time.

18 What I do want to address though, and hear from you
19 on, is with regard to the state court action. Is this the
20 exact same case?

21 MR. MULE: It's not, because the state court action
22 does not include certain forms. I don't believe it
23 includes -- it does not include the entities as plaintiffs
24 that are in this case. It does not include, I think some the
25 defendants, and right now I don't know exactly which ones but

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1 it's not the same parties that are in this action.

2 THE COURT: I'll hear from defense counsel.

3 MR. EMOUNA: Judge, just one more thing since we're
4 doing a little bit of housekeeping here.

5 There is something very troublesome in the
6 plaintiffs' complaint where they make scandalous allegations
7 against my client. Where his client, Mr. Shakewy, was
8 mediator for my client and his ex-wife, about infidelity and
9 so forth. This is a business divorce, Judge. There is no
10 reason to get into the scandalous allegations. Part of my
11 motion is the 12F to take the scandalous part of the motion
12 out. It has no public interest. It has nothing to do with
13 this case. What happened in his private matter with his
14 ex-wife, where Mr. Shakewy was the mediator, and he's putting
15 the stuff that he learned throughout his mediation in the
16 moving papers, Judge.

17 THE COURT: I'll let you respond.

18 MR. MULE: Your Honor, I don't think there is
19 anything scandalous that is put in here, but we'll respond.

20 THE COURT: Do you feel the claims are relevant to
21 the action; that is, the claims that you brought under --

22 MR. MULE: Yes, your Honor. We gave a background as
23 to -- there was a certain time period where the auto
24 dealership was not doing so well, and we gave a background of
25 well Mr. Elyahou who was going through some personal issues,

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1 he was given some leeway during that time period because of
2 those personal issues and then he wanted to expand the
3 business at that point.

4 THE COURT: That's not exactly what you said. You
5 can agree on that. That's not the way you pled it. Right?
6 Which is fine. I don't want to -- the allegations don't
7 exactly read the way you just stated.

8 MR. MULE: I was giving a summary, your Honor. If
9 you want I could read it or --

10 THE COURT: I don't need it read into this
11 particular conference transcript. But I will say that it's
12 not lost on me that there is more there. It strikes me that
13 you when you say not scandalous, it does have some color to
14 it.

15 But if you feel it's necessary, I'll address it in
16 response to the motion. I don't know what action you'll ask
17 as a result, other than the dismissal I'll see in your papers.

18 MR. EMOUNA: Judge, on 12F it's very precise. I'm
19 just ask certain parts to be taken out and stricken from the
20 record. That's all it is. That has no business being in the
21 action.

22 THE COURT: Look, I'm trying to straight line this
23 to the extent that we can. Is there any part of that -- does
24 he have to brief that or do you feel that those portions,
25 without going specifically to the complaint, paragraphs -- I

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1 read the complaint, I do know what you're talking about.

2 I'm saying to you, without me having to go do this,
3 are there portions here, without having him to request that it
4 be stricken, that you agree should be stricken?

5 MR. MULE: If he wants to discuss with me. We
6 haven't discussed this. This is not in the letter as far as I
7 could tell. So this is the first I'm hearing a request of any
8 sort. If he wants to talk to me about it, I'm happy to do so.

9 THE COURT: I would ask and encourage you; that is,
10 before making your motion, to reach out to plaintiff's counsel
11 and see if those paragraphs that you believe you're going to
12 be requesting that I strike, that you see if he might
13 voluntarily agree to.

14 MR. EMOUNA: Thank you, Judge.

15 THE COURT: Then you can all so indicate in your
16 papers. And then I can address it in that way.

17 MR. EMOUNA: Thank you, Judge.

18 THE COURT: Let me think in terms of a briefing
19 schedule. Did you have an idea in mind in terms of time?

20 MR. EMOUNA: Judge, one more thing. I'm not sure,
21 is this case going to stay with you or being shipped to EDNY
22 in Central Islip, because there is a trial going on in Central
23 Islip and I want to know. That may move things around, that's
24 why.

25 THE COURT: What may move things along?

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1 MR. EMOUNA: I'm saying, is this case going to
2 remain with you or going to be sent to Magistrate Judge
3 Tiscione?

4 THE COURT: The case remains with me as the District
5 Court judge, unless you all consent to it being before
6 Magistrate Judge Tiscione for all purposes. Otherwise, with
7 regard to discovery matters, Magistrate Judge Tiscione would
8 be handling those matters related to discovery. That would be
9 on the other side of your motions, though.

10 MR. EMOUNA: We can keep it here. I have no
11 objection. Except the traffic I don't like, but that's okay.

12 THE COURT: It has been assigned to me. I don't
13 right now anticipate that it's going to be reassigned to a
14 District Court judge that is sitting in Islip.

15 MR. EMOUNA: Thank you.

16 THE COURT: So the only thing I would say, I would
17 suggest that we should talk about -- I know that you have an
18 objection to an amended of the complaint in general. By the
19 same token, without tying it to the filing of your papers
20 right now or me setting the schedule, I am inclined to give a
21 short tight amount of time for plaintiffs to file an amended
22 complaint or request to file one, if it is that they think
23 they have additional claims. And set a time for it rather
24 than just allow it to be out there for a while.

25 My inclination would be to say plaintiff's counsel,

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1 based on your representations that you might have something
2 that you just discovered two days ago, that I give you until
3 the end of the month to file an amended complaint, or request
4 to file an amended complaint. And my rules provide that you
5 would then have to attach that complaint in that request. And
6 parallel to that, set the briefing schedule and that would
7 allow you to tee-up whatever claims, if things still remain
8 there that we anticipate will. And then a few more weeks
9 address any new claims that might be filed. But I would just
10 like to hear from the parties on that.

11 MR. FEINMAN: Your Honor, that would make perfect
12 sense from a judicial economy perspective.

13 My only issue is, respectfully, Mr. Mule has not
14 said: You're right, there is pleading deficiencies; or,
15 you're right we were planning to file an amended complaint.

16 I'm not sure. It seems like the idea of an amended
17 complaint was raised as a non-response, respectfully, to your
18 question. So I just haven't heard Mr. Mule say: We will be
19 filing an amended complaint.

20 If that's the case, we wouldn't object to it. But I
21 don't see, even the claims that he's raised, unless I'm
22 missing something, even affecting my clients. But if the
23 Court would like, we would consent to whatever you think
24 reasonable.

25 My main objection is I just haven't heard Mr. Mule

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1 say: We want to file an amended complaint. I would think
2 either he commits to doing that or not.

3 THE COURT: Okay. Counsel Mule?

4 MR. MULE: We're ready to proceed with whatever the
5 Court as far as a motion to dismiss briefing schedule on the
6 complaint as it stands.

7 THE COURT: Let's go with that then.

8 Motion papers: Defendants' motion papers should be
9 served by, I'll give you 30 days, or would you like shorter or
10 longer?

11 MR. FEINMAN: May I check my calendar?

12 THE COURT: Certainly.

13 MR. FEINMAN: Any time the week of May 12 or beyond
14 will work.

15 THE COURT: I would say Monday, May 13.

16 MR. FEINMAN: Thank you.

17 THE COURT: Plaintiff's opposition papers due by
18 June 10, 2024. That is to be served. And defendant's reply
19 and fully briefed motion to be served and filed by June 24,
20 2024.

21 I just would ask that the parties review my
22 individual practice rules as they relate to the service and
23 filing of motion papers. And specifically to take note that
24 papers are served and not filed until the motion is fully
25 briefed; that is, serve your adversary and courtesy copies on

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1 the Court, but not to file on the docket until you have a
2 fully briefed motion.

3 MR. FEINMAN: Understood.

4 MR. EMOUNA: Thank you.

5 THE COURT: Is there anything further that I should
6 address at this time from the parties?

7 MR. MULE: No, your Honor.

8 MR. EMOUNA: Not from the defense, your Honor.

9 THE COURT: Okay, with that we stand adjourned.
10 Thank you.

11 (Whereupon, the matter was concluded.)

12 * * * * *

13 I certify that the foregoing is a correct transcript from the
14 record of proceedings in the above-entitled matter.

15 /s/ Rivka Teich

16 Rivka Teich, CSR RPR RMR FCRR
17 Official Court Reporter
18 Eastern District of New York
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